

**In the
Indiana Supreme Court**

CASE NUMBER: 94S500-0608-MS-00290

**ORDER APPROVING THE APPENDIX TO ADMINISTRATIVE RULE 16, THE
NECESSARY ELEMENTS OF A PROPOSED PLAN TO IMPLEMENT
ELECTRONIC FILING OR AN ELECTRONIC SERVICE PILOT PROJECT
PURSUANT TO ADMINISTRATIVE RULE 16**

The Indiana Supreme Court Division of State Court Administration tenders for our approval, pursuant to Administrative Rule 16, an *Appendix. The Necessary Elements Of A Proposed Plan To Implement Electronic Filing Or An Electronic Service Pilot Project Pursuant To Administrative Rule 16*. Said Appendix is attached hereto and incorporated as part of this Order.

This Court finds that said Appendix should be approved to be effective January 1, 2007.

IT IS, THEREFORE, ORDERED that the tendered Appendix is hereby approved.

IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of this Order to each Clerk of the Circuit Court, to each judge of a trial court of record in Indiana, and to the Executive Secretary of the Indiana Judicial Center. The Clerks of the Circuit Court shall cause this Order and Appendix to be entered in the Record of Judgments and Orders of each trial court and shall post it in a public place for inspection by the local Bar and public.

DONE at Indianapolis, Indiana, this 6th day of October, 2006.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.

Appendix. The Necessary Elements of a Proposed Plan to Implement Electronic Filing or An Electronic Service Pilot Project Pursuant to Administrative Rule 16

Pursuant to Administrative Rule 16(B), the following provisions relate to the necessary elements required in any written request for approval of an electronic filing or an electronic service pilot project. The Division of State Court Administration may modify these provisions at any time.

I. Definitions

- (a) “Filing User” refers to attorneys who have an electronic case filing log-in and password to file documents electronically, or the agent an attorney has expressly designated to make a filing on his or her behalf.
- (b) “Electronic Case Filing System” (ECF) refers to the court’s system that receives documents filed in electronic form via the Internet, a court-authorized remote service provider, or through other remote means to and from the trial court’s case management system.
- (c) “Notice of Electronic Filing” refers to the notice that is automatically generated by the Electronic Case Filing System at the time a document is filed with the system, setting forth the time of filing, the name of the party and attorney filing the document, the type of document, the text of the docket entry, and the name of the attorney(s) receiving the notice.
- (d) “Archival Retention” refers to permanent records retention pursuant to Administrative Rule 7.
- (e) “Registration” refers to the execution of the User Agreement (see below) by a Filing User.

II. Elements

A proposed plan submitted pursuant to Administrative Rule 16(B) must contain the following elements.

A. System Compatibility

A detailed description of how the proposed system is compatible with the clerk’s office and the current technology in use in the court and court offices.

B. User Hardware and Software Requirements

The specific hardware and software users will need to electronically file documents and receive notice of case activity.

C. System Users

An identification of other court users, including the public, and a description of how the proposed system would be compatible with their use. Any proposed system must allow members of the public to view electronic and hard copy documents, unless they are deemed confidential by statute, court rule, or court order.

D. Eligible Cases

A description of what cases may be filed electronically, what cases must be filed electronically and what cases cannot be filed electronically.

E. Fees

What fees will be charged, if any, including those applicable to filing, serving, viewing and/or copying court documents. Proposals also must include a discussion of how fees will be collected and a comparison of the proposed fees to the existing (pre-electronic) fee structure. All fees must comply with the provisions of Administrative Rule 16(D).

F. Document Preservation

A description of the process for archival retention that satisfies permanent records retention and other requirements of the Indiana Rules of Court.

G. Local Rules

Any proposed local rules that the court intends to adopt to aid in the implementation of the Plan or the ECF.

H. Forms

Any forms that the court has developed to aid in the implementation of the Plan or the ECF, such as:

Attorney Registration Form

Notice of Manual Filing

Notice of Signature Endorsement

Declaration that Party Was Unable to File in a Timely Manner Due to Technical Difficulties.

Notice of Filing Sealed/Confidential Document Manually

H. Security

The measures that the court or its vendor would employ to protect the security of the ECF.

J. Proof of Service

A detailed description of how the system will accomplish service of process pursuant to Trial Rule 5 through electronic means. Return receipt email will not be considered adequate proof of service of process. In addition, the plan must describe how the court and other users may verify the service in the future.

K. Legal XML Compliance

A description of how the system will comply with the Legal XML E-Filing Standard. Compliance with this standard will help ensure compatibility with the future statewide CMS.

L. Proposed User Agreement(s), Forms, Other Documents

A sample of the proposed User Agreement(s) required by Administrative Rule 16(C), accompanied by a detailed description its components, the procedure for its use and the method by which the unique password and user identification will be assigned. In addition, any forms and other generic documents to be incorporated must be provided.

M. A proposed Implementation Plan and Schedule

A detailed description of when and how the Plan and system will be implemented, including anticipated training arrangements.

N. Accessibility by Self-Represented Litigants

A detailed description of whether self-represented litigants are permitted to use the system, and if so, how they will be accommodated. In addition, the plan must describe how documents filed in hard copy by self-represented litigants will be served to the other parties.

O. Performance Measurements

A detailed description of how the Court will determine if the pilot project meets expectations. These measurements may be a combination of reports and user queries. Some examples may be the equivalent of “comment cards” sent to the users and returned to the Court, error reporting by the user when he or she encounters a difficulty, the error being returned to the court, reports of downtime (maintenance) and system failures (i.e. crash) monthly or quarterly, and routine reviews by the system administrator for feature or software upgrades.

III. Content/ Substantive Requirements

In addition to the elements outlined above, any proposed Plan shall include the following content:

A. Eligible Users

Attorneys admitted to the Indiana bar and in good standing are eligible to register as Filing Users of a court’s Electronic Case Filing system. Registration via the User Agreement should require the Filing User’s name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar. Filing Users must notify the clerk of the court in writing within 30 days of any change of address, electronic or otherwise.

B. Registration Obligations

Registration as a Filing User constitutes consent to electronic service of all documents in accordance with the Indiana Rules of Court. Filing Users must agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised.

C. Public Accessibility

Members of the public may review at the clerk's office filings that have not been sealed by the court. A person who has system access may retrieve docket sheets and documents. Only a Filing User may file documents electronically.

D. General Format Requirements

Formatting requirements for all documents filed electronically must comply with the format and procedures set forth in the Indiana Rules of Court and the local rules for the county in which the electronic filing occurs. (If the court intends to create local rules specifically applicable to electronic filing, a copy of such proposed local rules must be included with the proposed plan.)

E. Initial Pleadings

With the exception of cases involving infractions, the initial pleading and accompanying documents, including the complaint and service of the summons, must be served in the traditional manner on paper. The plan must describe the method by which proof of service of process pursuant to Trial Rule 4 will be reflected on the electronic docket. In the event a case is initiated electronically, the plan shall include a description of the method by which the relevant filing and service fees are collected and remitted to the Clerk's office.

F. Appearance

The filing of a Notice of Appearance shall act to establish the filing attorney as an attorney of record representing a designated party in a particular cause of action.

G. Format of Attachments and Exhibits

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, except as specifically permitted by court rule or order.

Exceptions to the electronic filing requirement include the following documents:

- a. Exhibits in a format that does not readily permit electronic filing, such as videotapes, x-rays and similar materials;
- b. Paper documents that are illegible when scanned into PDF format; and
- c. Documents filed under seal or information not for public access as defined in Administrative Rule 9(G)(1).

Such components shall not be filed electronically, but instead shall be manually filed on paper with the clerk, and served upon the parties in accordance with the applicable Indiana Rules of Court and local rules for filing and service of non-electronic documents. Parties making a manual filing of a component must file electronically, in place of the manually filed component, a Notice of Manual Filing setting forth the reason(s) why the component cannot be filed electronically. The manually filed component must be presented to the clerk within 24 hours after the electronic submission of the Notice of Manual Filing. A paper copy of the electronically filed Notice of Manual Filing must accompany the component at the time of manual filing.

H. Certificate of Service

A certificate of service must be included with all documents filed electronically. The certificate shall indicate that service was accomplished pursuant to the court's electronic filing procedures. The party effectuates service on all registered parties by filing electronically. Those parties or attorneys who have been permitted by the court to be exempt from the electronic filing requirement must be provided the documents in paper form in accordance with the Indiana Rules of Court.

I. Electronic Copies and Electronic File-Stamps

When a document is filed electronically, the official record is the electronic recording of the document as stored by the court. The system will generate a Notice of Electronic Filing, which will be transmitted via e-mail to the filer and all attorneys of record in the matter. The Notice of Electronic Filing serves as the court's date-stamp and proof of filing.

J. Password Serves as Signature

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User. A Filing User has responsibility for all transactions under his or her password and is obligated to notify the clerk if his or her password is compromised.

The log-in and password required to submit documents to the Electronic Case Filing System shall serve, in part, as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Indiana Rules of Court, the local rules of the court, and any other purpose for which a signature is required in connection with proceedings before a court.

K. Signatures Other Than Filing User

Documents requiring signatures for two or more parties represented by different counsel must be electronically filed either by: (a) representing the consent of the other attorney(s) on the signature line where the other attorney's handwritten signature would otherwise appear; (b) identifying in the signature block attorneys whose signatures are required and by the submission of a notice of endorsement by the other attorneys no later than three business days after filing; (c) submitting a scanned document containing all necessary signatures; or (d) in any other manner approved by the court.

L. Filing Consequences

Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Indiana Rules of Court and the local rules of the court, and constitutes entry of the document on the court's docket. When a document has been filed electronically, the official record is the electronic recording of the

document as stored by the court, and the filing party is bound by the document as filed.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time of the court in order to be considered timely filed that day.

When a document is filed electronically, the court's system must generate a Notice of Electronic Filing, which will be transmitted via e-mail to the filer and all attorneys of record in the matter who are Filing Users. The party filing the document should retain a paper or electronic copy of the Notice of Electronic Filing, which serves as the court's date-stamp and proof of filing. Transmission of the Notice of Electronic Filing to an attorney's registered e-mail address constitutes service upon the attorney. Only the Notice of Electronic Filing, generated and transmitted by the court's system, is sufficient to constitute electronic service of an electronically filed document. Those parties or attorneys who have been permitted by the court to be exempt from the electronic filing requirement must be provided notice of the filing in paper form in accordance with the Indiana Rules of Court.

M. Sealed Documents

The provider of the electronic filing system must certify a level of security for sealed documents that demonstrates the ability to comply with the Indiana Rules of Court, especially Administrative Rule 9. The party filing a sealed document also must electronically file a Notice of Manual Filing. No document will be maintained under seal in the absence of an authorizing statute, court rule, or court order.

N. Court Orders

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Indiana Rule of Trial Procedure 77(d). If a party is not represented by at least one attorney who is a Filing User, the court must give notice in paper form in accordance with the Indiana Rules of Court.

O. Technical Difficulties

Parties are encouraged to file documents electronically during normal business hours, in case a problem is encountered. In the event a technical failure occurs, and despite the best efforts of the filing party a document cannot be filed electronically, the party should print (if possible) a copy of the error message received. In addition, as soon as practically possible, the party should file a Declaration that Party was Unable to File in a Timely Manner Due to Technical Difficulties.

If a party is unable to file electronically and, as a result, may miss a filing deadline, the party must contact the designated Electronic Filing System Administrator. If a party misses a filing deadline due to an inability to file electronically, the party may submit the untimely-filed document, accompanied by a declaration stating the reason(s) for missing the deadline. The document and declaration must be filed no later than 12:00 noon of the first day on which the court is open for business following the original filing deadline.

P. Retention of Documents in Cases Filed Electronically

Filing Users must retain signed copies of electronically filed documents until two (2) years after all time periods for appeals expire. Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form. On request of the court, the Filing User must provide original documents for review.

Originals of documents filed electronically which require scanning (*e.g.* documents that contain signatures, such as affidavits) must be retained by the filing party and made available, upon request, to the Court and other parties for a period of two years following the expiration of all time periods for appeals.

Q. Entry of Court Orders

All signed orders must be filed electronically by the court or court personnel. All orders, decrees, judgments, and proceedings of the court filed electronically will constitute entry on the court's docket. A hardcopy version of all judgments shall be entered in the Court's Record of Judgments and Orders, pursuant to Trial Rule 77(D).

IV. Exemption Requests

Any court tendering a Plan for approval may seek exemption from including or complying with one or more of the elements or content requirements specified in this Appendix by identifying:

- (1) The specific requirement from which the applying court seeks to be exempted;
- (2) The basis for seeking the exemption; and
- (3) What the applying court shall do in lieu of or to serve the underlying purpose of the specified requirement.

The Division of State Court Administration shall consider Requests for Exemption from the specifications of this Appendix on a case-by-case basis. In the event that the Request for Exemption is denied, such determination shall not preclude approval of the remainder of a court's tendered Plan.